

(Please note that Paper No. 13 was mailed out on September 16, before expiration of the full six month term.)

On July 21, 2003, applicant filed an "Amendment After Final" with a petition for one month's extension of time.

Contrary to what is stated in the "Notice of Abandonment", applicant filed no reply on August 19, 2003, but did file by fax a copy of the Reply file July 21, 2003.

On September 22, 2003, Applicant filed a Request for Continued Examination (RCE) Transmittal, along with certain other papers, as well as a petition for an additional extension of time, and the requisite fees. September 22, 2003, was a Monday, whereby the filing was timely to avoid abandonment of the present application.

REMARKS

As indicate above, the Notice of Abandonment makes no sense to applicants. It was mailed before expiration of the full six-month term.

At any rate, applicant timely field a reply to the Final Rejection but never received any written feedback from the PTO. However, during a telephone conference with Examiner Hines on August 19, 2003, applicant was informed that the amendment after final action had not been received by Examiner Hines. Accordingly, a duplicate copy was faxed to Examiner

In re of Appln. No. 09/763,415

Hines with evidence (copy of post card receipt) of the timely filing of such Reply after final action on July 21, 2003.

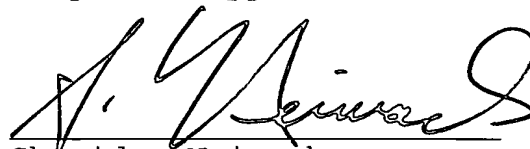
Regardless, the Notice of Abandonment is *prima facie* incorrect because the statutory term is six months, and an application cannot become retroactively abandoned to an earlier date until the full six month term has expired. Paper No. 13 was clearly premature, and the present application has not been abandoned.

Accordingly, applicant requests that such Notice of Abandonment be vacated.

Respectfully submitted,

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By



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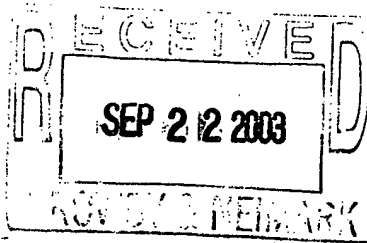
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,415	05/16/2001	Falk Fish	FISH4	9137

1444 7590 09/16/2003

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WASHINGTON, DC 20001-5303

EXAMINER

HINES, JANA A

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 09/16/2003

RECEIVED
OCT 02 2003
TECH CENTER 1600/2900

Please find below and/or attached an Office communication concerning this application or proceeding

RCE FILED = 22 SE 2003.

Notice of Abandonment

Application No.

09/763,415

Examiner

Ja-Na Hines

Applicant(s)

FISH, FALK

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 19 August 2003.
 - (a) ☒ A reply was received on 19 August 2003 (with a Certificate of Mailing or Transmission dated 19 August 2003), which is after the expiration of the period for reply (including a total extension of time of 4 month(s)) which expired on 20 July 2003.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.